

ORIGINAL FILED

JUL 12 1978
V. DENNIS WARDLE
COUNTY CLERK

1 DONALD D. STARK
2 A Professional Corporation
3 Suite 201 Airport Plaza
4 2061 Business Center Drive
5 Irvine, California 92715
6 Telephone: (714) 752-8971

4 CLAYSON, ROTHROCK & MANN
5 601 South Main Street
6 Corona, California 91720
7 Telephone: (714) 737-1910

7 Attorneys for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN BERNARDINO

12 CHINO BASIN MUNICIPAL WATER)
13 DISTRICT,)
14 Plaintiff,)
15 v.)
16 CITY OF CHINO, et al.)
17 Defendants.)

No. 164327

PLAINTIFF'S POST TRIAL
MEMORANDUM

18
19 Pursuant to order of the Court issued January 27, 1978,
20 Judgment was entered in this action whereby the Court retained
21 continuing jurisdiction of the matter.

22 To assist the Court in such continuing jurisdiction the
23 plaintiff, Chino Basin Municipal Water District, hereby submits
24 this Post Trial Memorandum setting forth the statement of the
25 nature of the action, and the principle characteristics of the
26 Judgment.

27 - - - - -
28 - - - - -

FILED
DONALD D. STARK
A PROFESSIONAL CORPORATION
SUITE 201
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92715
(714) 752-8971

LAW OFFICES
DOUGLAS D. STARK
A PROFESSIONAL CORPORATION
201
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92718
(714) 752-8971

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

NATURE OF ACTION

This action is a plenary adjudication of all rights in and to the ground waters of Chino Basin and its storage capacity. The case is predicated on the fact that the basin is, and since at least 1953 has been, in a condition of overdraft.

The Judgment adjudicated the rights of several hundred overlying landowners, producing in the aggregate over sixty percent of the basin supply for agricultural use, as well as several substantial industrial and commercial producers of water for use on their overlying lands, cities, public water districts, utilities, and mutual water companies all of whom produce water from the basin.

Each of the defendants named in the Judgment is a water producer or other water claimant or public water district within the Chino Basin. Each such defendant has been identified as a member of one of the following three groups:

a. Overlying (Agricultural) Producers -- A party entitled to possession of lands overlying Chino Basin producing water from such basin for overlying agricultural use on said lands.

b. Overlying (Non-Agricultural) Producers -- A party entitled to possession of lands overlying Chino Basin producing water from such basin for overlying use on said lands for other than agricultural purposes.

c. Appropriator -- A party producing water from Chino Basin pursuant to an appropriative or prescriptive right, which right is protected from loss or diminution by prescription by the provisions of Section 1007 of the California Civil Code.

LAW
DONALD
A PROFESSIONAL CORPORATION
SUITE 01
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92710
(714) 752-8871

1 II.

2 HIGHLIGHTS OF THE JUDGMENT

3 A. Declaration of Rights.

4 1. Overlying Agricultural Rights. Because of the nature
5 of the Physical Solution and the method of assessment proposed for
6 the exercise of overlying agricultural rights, it was not necessary
7 to declare individual overlying rights. This avoided a dual problem
8 First, the total number of parties in the category exceeded 1,200.
9 Second, the available records and measuring devices for precise
10 calculation of individual rights was less than adequate. Thus the
11 rights of all agricultural users have been declared in gross for
12 all necessary purposes of the Judgment.

13 2. State of California. Because of the several diverse
14 and complex interests of the State of California, and in view of
15 the willingness of the State to stipulate to be bound by the
16 Physical Solution of the Judgment, no attempt was made in the
17 Judgment to define or categorize the rights of the State of Cali-
18 fornia. The State and its agencies were subjected by Judgment, to
19 the Physical Solution, and their rights are treated in gross along
20 with the overlying agricultural rights.

21 3. Appropriative Rights. The twenty-two parties in the
22 "Appropriative Pool" have rights which are appropriative and pre-
23 scriptive in nature. Under full adjudication of such rights to
24 ground water each would have had differing priorities and quantities.
25 The complexity of such determination was avoided by resorting to
26 principles of mutual prescription in the Judgment. Thus, all of
27 the parties who are appropriators have been adjudged that their
28 rights have equal priority.

LAW OFFICES
DONALD STARK
A PROFESSIONAL CORPORATION
SUITE 100
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92715
(714) 752-8971

1 B. Continuing Jurisdiction of Watermaster Provisions.
2 1. Exemptions from Continuing Jurisdiction. The Court,
3 with limited exceptions, retained continuing jurisdiction of the
4 case. Exempted (either entirely or for a specific period of time)
5 from the Court's continuing jurisdiction was the re-determination
6 of Safe Yield and modifications of assessment formulas in the
7 appropriate pool for a period of ten years.
8 2. Watermaster Organization and Powers. The public
9 interests in the preservation of the water resource was protected
10 and assured in the sense that the Court's Watermaster is an over-
11 lying district, which holds no rights to produce ground water but
12 is the importing agency bringing supplemental water into the basin.
13 At the same time, the Watermaster Advisory Committee was created
14 and given broad powers to review, advise and consent to the action
15 of the Watermaster, subject to more detailed actions by pool com-
16 mittees formed to advise, consent and administer the affairs of the
17 several pools established under the Physical Solution. In these
18 many provisions, there is a balance created to assure the protection
19 of the private rights of the parties and the general public interest
20 in the preservation of the resource.
21 C. Physical Solution. The Physical Solution is the heart of
22 the Judgment. It is essential to understanding of the Physical
23 Solution that it be recognized that there is sufficient water to
24 meet the needs of all of the parties. This is because there are
25 significant imported water supplies available to supplement the
26 native Safe Yield of the basin. However, the supplemental waters
27 are significantly more expensive than local ground waters. Accord-
28 ingly, the function of the Judgment, and of its Physical Solution,

LA CES DONAL STARK CORPORATION
A PROFESSIONAL SERVICE CORPORATION
SU. 01
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92718
(714) 752-8971

1 is to provide an equitable and feasible method of assuring that a
2 parties share in the burden of the costs of importing the necessa
3 supplemental water to achieve a hydrologic balance within Chino
4 Basin.

5 The Physical Solution provides the mechanics by which the
6 management plan is implemented. The basic concept of the Physical
7 Solution is similar to that adopted in the prior ground water
8 adjudications in Southern California, i.e., the parties are entitl
9 to produce their requirements for ground water from the basin,
10 provided that they contribute, by Watermaster assessments, suffici
11 money to assure purchase of supplemental water to replace any
12 aggregate production in excess of the Safe Yield. It is in the
13 detailed formulation of that Physical Solution that some of the
14 most interesting features of the Judgment were developed.

15 1. Multiple Pool Plans. All of the parties have been
16 categorized into three major pools. The total Safe Yield of the
17 basin has been allocated as between the three pools with each pool
18 assuming a level of reduction in aggregate rights below current
19 levels of production. Within each pool, by utilizing this format,
20 the Judgment grouped parties with distinct economic and social
21 concerns in a manner allowing them to provide the necessary funding
22 within their particular needs and requirements. For example, it is
23 of importance to agricultural operations that the total cost of
24 water be kept to a minimum. It is also important to the entire
25 area that the Physical Solution be structured so as to encourage
26 continued commitment of land to agricultural or "green belt" activi
27 Accordingly, approximately 60% of the Safe Yield of the basin is
28 committed, in gross, to the Overlying (Agricultural) Pool. Over

1 production by that pool, in the aggregate, is to be replaced by a
2 gross assessment on all production by all parties within the pool
3 The net effect of the use of this assessment technique, under cur-
4 rent conditions, is an assessment in the magnitude of \$5.00 per
5 acre foot for replenishment water.

6 On the other hand, overlying industrial and commercial
7 users do not find the cost of water to be as critical a factor.
8 Accordingly, the more traditional "net assessment" formula was
9 used with rights being allocated among the twelve members of the
10 Overlying (Non-Agricultural) Pool. In this assessment mode, over-
11 production is replenished on the basis of an assessment for the
12 full cost of excess water produced on an acre foot per acre foot
13 basis.

14 In the case of the Appropriators, the Judgment developed
15 formula whereby the total over-production by that pool is met by
16 a gross assessment as to 15% of the cost and a net assessment as t
17 the remaining 85% of the cost.

18 The Judgment then leaves the assessment pattern within
19 each pool under the continuing jurisdiction provisions subject to
20 review and modification by the Court. Thus, each category of
21 producers retains the maximum flexibility to meet future and
22 developing circumstances. In this regard, the Judgment specifically
23 recognizes the impact of social-economic conditions and provides
24 for continuing study of those factors.

25 2. Operating Safe Yield. The concept of operating Safe
26 Yield was applied with regard to the Appropriative Pool. The net
27 effect of the concept was to allow limited mining of water in
28 storage in excess of Safe Yield during the early period of the

LAW
FIRM
OF
PROFESSIONALS
SUI
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92715
(714) 752-8971

1 Physical Solution in order to reduce the burden of assessment. As
2 a result, provision was made for limited extractions by the Approp-
3 priative Pool in excess of that pool's share of the Safe Yield.
4 Offsetting that right is the fact that the Appropriative Pool takes
5 the full burden of reductions in the Safe Yield if such reductions
6 should occur in the future. A maximum limit of 200,000 acre feet
7 has been placed upon the aggregate mining of water authorized under
8 this provision of the Judgment.

9 3. Ground Water Storage Contracts. The utilization of
10 excess ground water storage capacity has been recognized in the
11 Judgment. The administration of activities of storing water to
12 utilize that capacity are provided for in underground storage
13 agreements pursuant to Watermaster regulations. This is an enormous
14 significant aspect of the adjudication, in view of the existence of
15 approximately 2,000,000 acre feet of unused storage capacity within
16 the basin, the largest resource of its kind in Southern California.

17 4. In Lieu Areas. The element of water quality, hereto-
18 fore only peripherally approached in ground water adjudication, was
19 accommodated in the Judgment by provision for "in lieu areas."
20 Therein producers may obtain compensation for water left in the
21 ground in lieu of its production pursuant to adjudicated rights.
22 Provision is made within the Judgment for "in lieu areas" to be
23 established by action of the Court.

24 5. Facilities Equity Assessment. In the Appropriative
25 Pool, provision has been made for implementation of a "facilities
26 equity assessment" as an aid to a gross assessment if that was
27 ultimately adopted by the pool. These provisions are generally
28 patterned on the statutory solution involved in the Basin Equity

LAW OFFICES
DONA D. STARK
A PROFESSIONAL CORPORATION
SUITE 401
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92715
(714) 752-8971

1 Assessment provisions of the Orange County Water District Act.

2 6. Agency Contracts for Exercise of Overlying (Non-
3 Agricultural) Rights. The overlying rights of the Non-Agricultura
4 Pool may be well exercised ultimately by municipal systems of
5 parties within the Appropriative Pool. Inasmuch as the overlying
6 right by its nature is appurtenant to the land and cannot be trans-
7 ferred, provision is made for an appropriator to enter into and
8 approve an agency agreement to produce water for delivery to the
9 overlying land pursuant to its overlying right.

10 7. Unallocated Safe Yield Water. It is contemplated tha
11 over a long period of years, agricultural production may well fall
12 substantially below the aggregate amount of the Safe Yield right
13 allocated to the pool. That Safe Yield right will remain availabl
14 for agricultural use, but in a given year or a series of years
15 there may be a substantial amount of Safe Yield water which is not
16 pumped by Overlying Agricultural Pool parties. The Judgment adopt
17 a formula for allocating that unpumped water among the members of t
18 Appropriative Pool by first, replacing any reductions in Safe Yiel
19 (the full impact of which falls on the Appropriative Pool), and
20 then to recognize the conversion of agricultural land to municipal
21 and domestic purposes.

22 8. Use of Reclaimed Water. Reclaimed water is recognized
23 as part of supplemental water subject to use for replenishment by
24 Watermaster or for storage by any party.

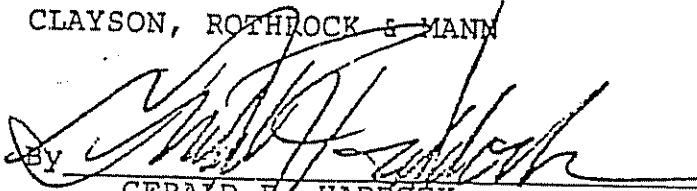
25 9. Export. The Judgment did not limit or prohibit export
26 of ground water production, but such export over base export
27 quantities was made subject to a full net assessment. That is, a
28 party producing "new" water for export must pay an assessment

1 sufficient to buy or replerishment water to replace exported wa
2 acre foot for acre foot.

3 10. Unlawful Pumping Practices. The Judgment does not
4 preclude the prosecution of any cause of action which may arise
5 with relation to the location on the extent of pumping between
6 neighboring well owners which may constitute a wrongful interfer
7 The subject matter of the Judgment is the determination and allo
8 cation of rights in the gross quantity of water representing the
9 Safe Yield of the ground water basin.

10 DATED: July 11, 1978.

DONALD D. STARK
A Professional Corporation
CLAYSON, ROTHROCK & MANN

BY 
GERALD R. HADDOCK
Attorneys for Plaintiff

LAV
DONALD D. STARK
A PROFESSIONAL CORPORATION
SUITE 201
2061 BUSINESS CENTER DRIVE
IRVINE, CALIFORNIA 92718
(714) 752-8971

17
18
19
20
21
22
23
24
25
26
27
28